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Paper No. 11

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**OFFICE OF PETITIONS**

In re Application of	:
Brian J. BROZELL et al	:
Application No. 09/982,249	: DECISION DISMISSING PETITION
Filed: October 16, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 17638	:

This is a decision on the petition under 37 CFR 1.137(f), filed October 3, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of counterpart applications filed in eighteen-month countries on October 15 and 16, 2002.

A review of the file record discloses that a notice to rescind was received in the USPTO on December 2, 2002, bearing a certificate of mailing dated November 25, 2002. The notice to rescind also contains the following language: "Note: Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or international filing required by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c)."

In the instant application, although the notice to rescind was received in the USPTO more than forty-five days after the filing date of the counterpart applications, the request to rescind included a notification of foreign filing and a certificate of mailing and, as such, was entitled to the benefit of a certificate of mailing under 37 CFR 1.8. *See* 37 CFR 1.8(a). Therefore, as a request to rescind and notification of foreign filing was filed **not later than forty-five (45)**

**days after the date such counterpart application was filed (35 U.S.C. § 122(b)(2)(B)(iii), the application is not be regarded as abandoned. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.**

Since this application is not in fact abandoned, for the reason stated above, no fee has been assessed to petitioner's deposit account.

This application is being forwarded to Technology Center AU 3727 for appropriate action on the reply received August 25, 2003 to the nonfinal Office action of May 21, 2003.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482.

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